



CERTIFICATE OF EXPRESS MAILING

EXPRESS MAIL LABEL NO: EV219322087
DATE OF DEPOSIT: April 1, 2003

I hereby certify that this transmittal and the documents referred to as enclosed therein are being deposited with the U.S. Postal Service in an envelope as "Express Mail Post Office to Addressee," under 37 CFR 1.10 on the date indicated above and is addressed to:
Commissioner for Patents, Washington, D.C. 20231.

Beverly A. Lee
Beverly A. Lee

In re Application of:
Mark Roland Boeder

Application No.: 09/900,234

Filed: July 6, 2001

For: CHRYSANTHEMUM PLANT
NAMED 'VULCAN TIME'

Art Unit: 1661

PTO Confirmation No.: 3988

Examiner: Kizilkaya, Michelle R.

PTO Atty. Docket: 10451.0016.NPUS00

RESPONSE TO REQUIREMENT FOR INFORMATION UNDER 37 C.F.R. § 1.105

Commissioner for Patents
Washington, D.C. 20231

Sir:

This is filed in response to the Examiner's Requirement for Information under 37 C.F.R. § 1.105 attached to the Office Communication mailed October 1, 2002. Listed on accompanying PTO Form 1449 is information that may be considered material to the examination of this application, in compliance with the Examiner's Requirement for Information under 37 C.F.R. § 1.105, and the duty of disclosure requirements of 37 C.F.R. §§ 1.56, 1.97 and 1.98. The fee and certification requirements of 37 C.F.R. § 1.97 are waived pursuant to the Examiner's Requirement for Information under 37 C.F.R. § 1.105.

The Examiner has requested information under 37 C.F.R. § 1.105 to determine when, if ever, the claimed plant variety, 'Vulcan Time,' was publicly available prior to the U.S.

filing date of this application. The numbering on the accompanying Form PTO-1449 is a continuation of the numbering in Applicant's Information Disclosure Statement filed November 6, 2001 and Supplemental Information Disclosure Statement filed on June 17, 2002, in connection with above-captioned application. Copies of the documents listed on the accompanying PTO Form 1449 are enclosed.

The Examiner has requested that the Applicant submit copies of a published application for Community Plant Variety Rights ("CPVR") filed in the European Community Plant Variety Office ("CPVO") for the variety that is the subject of this U.S. plant patent application. The Examiner has also requested copies of the published proposed denomination for the CPVR application and the CPVR grant. The CPVR application is still pending and has not yet been granted so a published copy of the PBR grant is not available. Moreover, the CPVO has informed Applicant's attorney that the CPVO does not publish CPVR applications but rather publishes only a citation to the CPVR application in the Official CPVO Gazette. A citation to the Applicant's CPVR application was published in the CPVO Official Gazette on February 15, 1999 and a copy of the published citation was included as item number 8 on the PTO Form 1449 accompanying Applicant's Supplemental Information Disclosure Statement filed June 17, 2002. An additional copy of the published citation (again as item number 8 on the accompanying PTO Form 1449) is enclosed here for the Examiner's convenience.

The cultivar denomination 'Vulcan Time' was not proposed in the CPVR application at the time the CPVR application was filed. The CPVO has informed the Applicant's attorney that the cultivar denomination 'Vulcan Time' was first proposed on May 29, 2002 and not published in the Official CPVO Gazette until December 15, 2002, both dates which are well after the U.S. filing date. A copy of the Official Gazette publication is not available to the Applicant. An unofficial publication of the proposed denomination 'Vulcan Time' is

available on the CPVO Computer Database located on the CPVO web site, www.cpvo.eu.int/en.

A copy of the web site database citation for 'Vulcan Time' was previously included as item number 9 on the PTO Form 1449 accompanying Applicant's Supplemental Information Disclosure Statement filed on June 17, 2002. A current print-out of the CPVO web site citation is enclosed here for the Examiner's convenience (again as item number 9 on the accompanying PTO Form 1449). Unfortunately, however, the web site citation does not reflect either the date on which the denomination was proposed or the official (or unofficial) publication date for the proposed denomination.

Enclosed as item number 10 on the accompanying PTO Form 1449 is a citation from the UPOV-ROM GTITM Computer Database 2002/01, January 1, 2002, GTI Jouve Retrieval Software, for the CPVR application pending in the CPVO. (The UPOV-ROM GTITM Computer database has been updated since January 1, 2002 but an updated version of the database is not available to the Applicant.) As shown in the UPOV-ROM citation, the CPVR application was filed under Breeder's Reference No. *p106/98* on December 21, 1998, which is more than one year prior to the U.S. application filing date of July 6, 2001.

Further enclosed are copies of 1998, 1999, 2000 and 2001 Ficor catalogs in which the variety that is the subject of this application was offered for sale outside the United States under the cultivar denomination 'Vulcan Time' prior to the U.S. application filing date. Applicant believes that the 1998, 1999 and 2000 Ficor catalogs were all publicly distributed outside the United States more than one year prior to the U.S. filing date for this U.S. application. The 2001 Ficor catalog was first publicly distributed less than one year prior to the U.S. application date. The first date of publication of each of the catalogs is shown in the accompanying PTO form 1449.

Applicant believes that the first actual sale of the variety occurred on March 28, 1998 in the United Kingdom under the cultivar denomination 'Vulcan Time.' Applicant is not aware of any sale or other public distribution of the variety under any denomination other than 'Vulcan Time.' To the Applicant's knowledge, the variety 'Vulcan Time' was not sold, offered for sale, published or otherwise publicly disclosed in the United States more than one year prior to the U.S. application filing date. Applicant believes that the variety was first publicly shown and/or offered for sale in the United States on July 8, 2000.

The right is reserved to establish the patentability of the claimed invention over any of the information provided here, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

It is believed that this disclosure complies with the requirements of 37 C.F.R. §§ 1.105, 1.56, 1.97, and 1.98, and the Manual of Patent Examining Procedures § 609. If for some reason the Examiner considers otherwise, or requires additional information, it is respectfully requested that the undersigned be called so that any deficiencies can be remedied.

It is respectfully requested that the Examiner initial and return a copy of the enclosed PTO Form 1449, and to indicate in the official file wrapper of this patent application that the enclosed information have been considered.

///

///

///

///

///

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 08-3038 referencing docket number 10451.0016.NPUS00.

Date: April 1, 2003

Respectfully submitted,

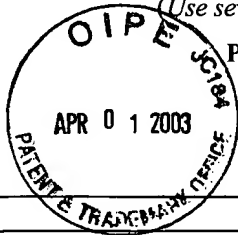


Mark K. Dickson
(Attorney Reg. No. 32,889)
HOWREY SIMON ARNOLD & WHITE, LLP
301 Ravenswood Avenue
Menlo Park, CA 94025-3434
(650) 463-8100
Attorney for Applicant

LIST OF REFERENCES CITED BY APPLICANT

(Use several sheets if necessary)

PTO FORM 1449



ATTY. DOCKET NO.

*10451.0016.NPUS00

APPLICATION NO.

*09/900,234

APPLICANT

*MARK ROLAND BOEDER

FILING DATE

*July 6, 2001

GROUP

*1661

U.S. PATENT DOCUMENTS

*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	1.						
	2.						
	3.						
	4.						

FOREIGN PATENT DOCUMENTS

*EXAMINER INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION	
							YES	NO
	5.							
	6.							
	7.							

OTHER REFERENCES

(Including Author, Title, Date, Pertinent Pages, Etc.)

	8.	CPVO Official Gazette, 1, 99, 14 (February 15, 1999), citation of application for Community protection rights for Chrysanthemum Breeder's Reference No. p106/98.
	9.	CPVO Computer Database, www.cpvo.eu.int/en , (updated February 27, 2003), website citation under Titles Granted and Applications for pending application for Community protection rights, Chrysanthemum Breeder's Reference No. p106/98 (proposed denomination 'Vulcan Time.'
	10.	UPOV-ROM GTITM Computer Database 2002/01, January 1, 2002, GTI Jouve Retrieval software, Citation for Chrysanthemum Breeder's Reference No. p106/98 for Application No. 981621 for Community protection rights, filed December 21, 1998 in the Community Plant Variety Office (CPVO).
	11.	1998 Ficor catalog, first publicly distributed on October 30, 1997.
	12.	1999 Ficor catalog, first publicly distributed on October 30, 1998.
	13.	2000 Ficor catalog, first publicly distributed on November 9, 1999.
	14.	2001 Ficor catalog, first publicly distributed on October 12, 2000.
	15.	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.